

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)

Petition for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Public Utilities Act, to Construct, Operate and Maintain a New High Voltage Electric Service Line and Related Facilities in the Counties of Adams, Brown, Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon, Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler, Scott and Shelby, Illinois.)

Docket No. 12-0598

**MOTION TO AMEND CASE MANAGEMENT
PLAN TO EITHER ELIMINATE THE
DECEMBER 31, 2012 FILING REQUIREMENT
OR TO EXTEND THE TIME FOR SAME**

Stop the Power Lines Coalition (the "Coalition"), by its attorneys, Hinshaw & Culbertson LLP, moves to amend the Case Management Plan to either eliminate the December 31, 2012 filing requirement or to extend the time for such filing until February 11, 2013, when Staff and Intervenor Direct Testimony is due. In support of its motion, the Coalition submits the Affidavit of Peggy Mills, attached as Exhibit 1. In further support of its motion, the Coalition states:

1. The schedule set forth in Section IV of the Case Management Plan Order issued by the Administrative Law Judges on December 14, 2012 requires Staff and Intervenor to make a filing by December 31, 2012 that identifies the alternative routes they propose for Ameren's 345 kV transmission line proposal (the "Proposed 345 kV Transmission Line") that is the subject of this proceeding. The Case Management Plan states on page 4 that:

Staff and any Intervenor identifying alternative routes on December 31, 2012 must provide names and addresses of affected landowners if such landowners are not already affected by either ATXI's primary or alternative route. The names and addresses must be same as those obtained from the records of the tax collector of the county in which the land is located.

2. In its Direct Testimony, the Petitioner, Ameren Transmission Company of Illinois ("ATXI") admitted that its parent company and its multiple affiliates have been planning this project for 8 years. [Direct Testimony of M. Borkowski, ATXI Ex. 1.0 at 6:115-117.] But under the Case Management Plan, any Staff or Intervenor witness who may testify that the Proposed 345 kV Transmission Line should be located other than on ATXI's primary or alternative route has less than two months from ATXI's petition was filed in which to redesign the route and identify all affected landowners, or their testimony concerning potential alternative routes will be barred. That is unfair, inappropriate and quite possibly would be a reversible error if the Commission actually affirmed barring testimony on that ground.

3. The Coalition recognizes that it is possible that in other transmission line proceedings governed by Section 8-406 of the Public Utilities Act ("Act"), 220 ILCS 5/8-406, the Staff and Intervenor may have been required to identify landowners on proposed alternative routes. In contrast, Ameren chose to file this case under the expedited procedures of Section 8-406.1 of the Act, 220 ILCS 5/8-406.1. The rights of Staff and Intervenor to give ATXI's proposed routes full and thoughtful examination ought not be forfeited because Ameren chose to pursue expedited approval rather than filing under the normal procedures of Section 8-406 of the Act.

4. Under the Act, it is ATXI, not Staff and Intervenor, who bears the burden of proof and has the duty to prove that the Proposed 345 kV Transmission Line satisfies the statutory criteria. Pursuant to Subsection 8-406.1(f), it is ATXI's burden to persuade the

Commission that based upon the application and the evidentiary record “the Project will promote the public convenience and necessity.” *Id.* 5/8-406.1(f). In addition, one of the other criteria that ATXI must prove to the satisfaction of the Commission is:

(1) That the Project is necessary to provide adequate, reliable and efficient service to the public utility’s customers and is the least-cost means of satisfying the service needs of the public utility’s customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

Id. 5/8-406.1(F)(1).

5. In the 8 years that ATXI, its parent and its affiliates have been studying this project, they presumably have eliminated routes that were imprudent or impractical; have identified the potential routes that were feasible; and have narrowed the feasible routes to the two that they thought best met the applicable statutory criteria. Thus, ATXI, its parent who is funding the project, and its subsidiaries who will be responsible for designing, constructing, and operating it, presumably have analyzed all possible routes and should be prepared to readily respond to any alternative route that might be proposed based on their prior analysis.

6. The Coalition recognizes that because part of the statutory criteria requires a comparative cost analysis, it may be in the interests of Staff and Intervenors to ultimately identify the landowners along alternative routes to make the comparative analysis easier to perform. But that does not translate into a legal obligation to propose and plan alternative routes. If there are costs, environmental problems or other negative factors that are part of the evidence in this proceeding and call into question the validity of ATXI’s route selection, the evidentiary burden still rests with ATXI to prove that its proposal is the least cost alternative that satisfies all other statutory criteria. Telling Staff and Intervenors that they have to plan the route for the

Proposed 345 kV Transmission Line and identify all affected landowners if they do not like the two routes proposed by ATXI, or be barred from proposing an alternative route, simply is not supported by the statutory structure or language.

7. If the Administrative Law Judges continue to believe that Staff and Intervenors should be required to plan and identify landowners on alternate routes, then as illustrated in more detail in the attached Affidavit of Peggy Mills, to require completion of that analysis less than two months after the Petition was filed is not practical. That is particularly true when the notice of the requirement is contained in an order issued in the afternoon of December 14, leaving only 17 days, including the intervening holidays, to identify the proposed alternative route and all the affected landowners. To the extent any such requirement is imposed, the Staff and Intervenors should be required to fulfill the requirement when they file this direct testimony on February 11, 2013.

8. The coalition appreciates the Administrative Law Judges' concern and interest in protecting the rights of landowners who could be affected if a route is approved that is neither Petition ATXI's primary or alternative route. As a practical matter, it does not matter whether such a landowner receives notice two months after the Petition was filed or slightly more than three months after the Petition was filed. They will not be able to effectively intervene and protect their rights in this proceeding. If the Commission concludes that a route other than ATXI's proposed primary or alternative route is the route that best meets the statutory criteria, the proper procedure would be to deny the affected part of ATXI's petition and, if ATXI chooses to do so, ATXI can file a new proceeding, pursue an alternative route and give the requisite notice to affected landowners so that they have adequate time for a meaningful response.

WHEREFORE, Stop the Power Lines Coalition requests that an amended case management plan order be issued that eliminates the December 31, 2012 filing date for Staff and Intervenor to identify alternative routes and affected landowners. In the alternative, the Coalition requests that an amended case management plan order be issued that requires Staff and Intervenor to identify alternative routes and affected Landowners, in their Direct Testimony in this proceeding to be filed on February 11, 2013.

Respectfully Submitted,

STOP THE POWER LINES COALITION

_____/s/ Edward R. Gower

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